

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN EAR PROTECTION
DEVICES**

Inv. No. 337-TA-518

LIMITED EXCLUSION ORDER

The Commission instituted this investigation on August 6, 2004, based on an amended complaint filed by 180s, Inc. and 180s, LLC of Baltimore, Maryland, against nine respondents, including Ningbo Electric and Consumer Goods, Import & Export Corp. ("Ningbo") of China, Vollmacht Enterprises Co., Ltd. ("Vollmacht") of Taiwan, and Wang Da, Inc. Retail and Wholesales ("Wang Da") of New York, New York. 69 *Fed. Reg.* 47955 (August 6, 2004). The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ear protection devices by reason of infringement of claims 1, 3, 13, 17-19, and 21-22 of U.S. Patent No. 5,835,609.

The investigation was subsequently terminated as to six of the respondents on the basis of consent orders and settlement agreements. Ningbo, Vollmacht, and Wang Da did not respond to the complaint, the notice of investigation, the discovery order of the presiding administrative law judge, or an order to show

cause why they should not be found in default. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. § 1337(g)(1), and Commission Rule 210.16(a), 19 C.F.R. § 210.16(a), the Commission found Ningbo, Vollmacht, and Wang Da to be in default. The Commission therefore presumes the facts alleged in the complaint to be true. 19 U.S.C. § 1337(g)(1). The complainants seek relief limited to Ningbo, Vollmacht, and Wang Da.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that an appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of ear protection devices that are covered by one or more of claims 1, 3, 13, 17, 18, 19, 21 and 22 of U.S. Patent No. 5, 835,609, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Ningbo, Vollmacht, or Wang Da. The Commission has also determined to issue a cease and desist order against Wang Da.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of ear protection devices that are subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Ear protection devices that are covered by one or more of claims 1, 3, 13, 17, 18, 19, 21 and 22 of U.S. Patent No. 5,835,609 that are manufactured abroad by or on behalf of, or imported by or on behalf of, Ningbo Electric and Consumer Goods, Import & Export Corp.; Vollmacht Enterprises Co., Ltd.; or Wang Da, Inc. Retail and Wholesales; or any of their affiliated companies, parents, subsidiaries, or other related business entities; or any of their successors or assigns; shall be excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

2. Ear protection devices that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than 60 days after the date of receipt of this action.

3. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to ear protection devices that are imported by and for the use of the

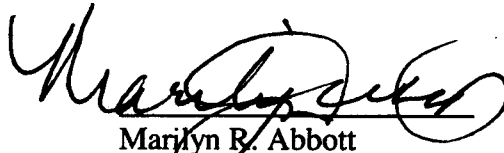
United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

4. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

5. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Bureau of Customs and Border Protection.

6. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.


Marilyn R. Abbott
Secretary

Issued: 6/3/05

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN EAR PROTECTION
DEVICES**

Investigation No. 337-TA-518

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Wang Da, Inc. Retail and Wholesales, 230 Canal Street, New York, NY 10013 (hereinafter "Wang Da" or "Respondent") cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, ear protection devices that are covered by one or more of claims 1, 3, 13, 17, 18, 19, 21 and 22 of U.S. Patent No. 5,835,609 ("the '609 patent"), in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude issuance of this cease and desist order to Respondent.

I.

Definitions

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) Wang Da Inc. Retail and Wholesales, "Wang Da," or "Respondent" shall mean Wang Da Inc. Retail and Wholesales, 230 Canal Street, New York, NY 10013.
- (C) "Person" shall mean an individual, non-governmental partnership, firm,

association, corporation, or other legal or business entity.

(D) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(E) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(F) The term "covered products" shall mean: ear protection devices that infringe one or more of claims 1, 3, 13, 17, 18, 19, 21 and 22 of the '609 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order.
For the remaining term of the '609 patent, Respondent shall not:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation),
in the United States imported covered products;

(C) advertise imported covered products;

(D) solicit U.S. agents or distributors for imported covered products; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '609 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2006. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent has imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of the '609 patent.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for

civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond of 100 percent of entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

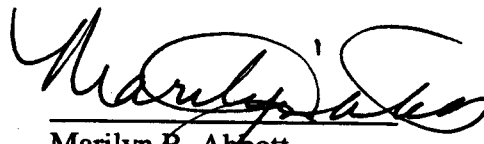
The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior

to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

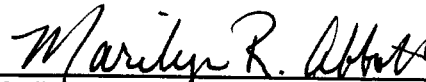
By Order of the Commission.


Marilyn R. Abbott
Secretary

Issued: 6/3/05

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER AND A CEASE AND DESIST ORDER AGAINST A RESPONDENT FOUND IN DEFAULT; TERMINATION OF INVESTIGATION**, was served upon the Commission Investigative Attorney, Benjamin D.M. Wood, Esq., and the following parties via first class mail and air mail where necessary on June 6, 2005.



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